

November 14, 2022

Dear Fulton Board of Elections and Registration,

We are writing on behalf of the DSCC to encourage you to act swiftly in accordance with Georgia law to ensure voters have every opportunity to make their voice heard in the December 6, 2022 runoff election.

While we very much acknowledge and appreciate that your hardworking staff has been under great strain to bring the 2022 general election to a close, Georgia law obligates you to move quickly to prepare for voting in the December 6<sup>th</sup> runoff.

As you know, in 2021 the legislature amended Georgia law to shorten the timeline for a federal runoff election. The December 6 runoff will be held just 28 days after the November 8 general election. **As a result of this shortened timeline, SB 202 mandates that advance voting for the runoff election begins “as soon as possible” prior to the date of the runoff.**<sup>67</sup> Advance voting must begin no later than November 28, the second Monday prior to the runoff.<sup>68</sup> However, your county is required to do everything possible to start early voting “as soon as possible,” which likely means early voting should start far before that deadline. We urge you to ensure all voters have an opportunity to cast a ballot during this shortened period.

Beginning early voting on or before Tuesday, November 22 or, at the latest, Wednesday, November 23 will give voters – especially those who may be traveling for the Thanksgiving holiday – the greatest opportunity to cast their ballots in this critical election.<sup>69</sup> As an example, counties may begin early voting on Tuesday, November 22 while completing all required notices and testing by following the schedule below:

- No later than **Monday, November 14**: Provide notice of the time and location of logic and accuracy testing (notice must be provided no later than five days before such testing begins).<sup>70</sup>
- **Tuesday, November 15**: Certify results of the November 8 General Election and approve advance voting dates and locations. Publicize notice of the advance voting dates, times,

---

<sup>67</sup> O.C.G.A. § 21-2-385(d)(1).

<sup>68</sup> *Id.*

<sup>69</sup> The Secretary of State’s office has confirmed that advance voting may begin prior to Thanksgiving “if you are able to complete all required preparations and notifications by then.” Blake Evans, 2022 Official Elections Bulletin, *Certification Target for General Election and Advance Voting for December 6<sup>th</sup> Runoff*, Nov. 12, 2022.

<sup>70</sup> Ga. Comp. R. & Regs. § 183-1-12-.08(1)(c).

and locations (notice must be posted no later than seven days prior to the start of advance voting in a runoff election).<sup>71</sup>

- No later than **Saturday, November 19**: Begin logic and accuracy testing (must begin no later than three days before advance voting begins).<sup>72</sup>
- **Tuesday, November 22**: Advance voting begins.

The Secretary of State recently released guidance indicating that Georgia law prohibits advance voting from occurring on Saturday, November 26. **However, this is a plain misreading of Georgia law.** In fact, Secretary Raffensperger himself stated in a November 9 press conference that “some counties” will “likely have Saturday voting following Thanksgiving.”<sup>73</sup> Gabriel Sterling, the Secretary of State’s Chief Operating Officer said on CNN that same day “there’s a very good possibility we will probably have voting on Saturday, November 26 in many counties *if they so choose.*”<sup>74</sup>

The provision of the law cited in the Secretary of State’s November 12 Official Election Bulletin which prohibits early voting from occurring on a Saturday following a state holiday **simply does not apply to runoff elections.** The statute says that mandatory advance voting should not occur on the second Saturday before the election if it “follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday.”<sup>75</sup> However, the prohibition only applies to advance voting held on the second Saturday “*prior to a primary or election.*”<sup>76</sup> This requirement does not apply during the advance voting period prior to a runoff election. The statute plainly omits the word “runoff” from this sentence, indicating it is only intended to apply to a primary or general election.

Further, the statute is clear that if advance voting *cannot* be held on the second Saturday prior to an election, it “*shall be held on the third Saturday prior to such primary or election.*”<sup>77</sup> In the runoff, it is not possible for counties to hold advance voting on the third Saturday before the election as the statute requires, because the Secretary of State does not intend to certify the

---

<sup>71</sup> O.C.G.A. § 21-2-385(d)(3).

<sup>72</sup> Logic and accuracy testing must begin on or before the third day preceding the advance voting period. Ga. Comp. R. & Regs. § 183-1-12-.08(1)(a).

<sup>73</sup> Georgia Secretary of the State News Conference on Election Results, CSPAN (Nov. 9, 2022) <https://www.c-span.org/video/?524156-1/georgia-secretary-state-brad-raffensperger-update-senate-runoff-election>.

<sup>74</sup> *Official lays out what the next few weeks look like in Georgia amid runoff*, CNN.com (Nov 9, 2022) <https://www.cnn.com/videos/politics/2022/11/09/gabe-sterling-john-king-georgia-runoff-midterm-election-vpx.cnn>.

<sup>75</sup> O.C.G.A. § 21-2-385(d)(1).

<sup>76</sup> In contrast, the prior sentence mandates that advance voting must end “on the Friday immediately prior to each primary, election *or runoff.*” *Id.*

<sup>77</sup> *Id.* This provision pre-dates, SB 202, which mandated advance voting on both the second and third Saturday prior to the election. Prior to SB 202, advance voting was required only on the second Saturday prior to the election, not the third. County registrars had discretion to permit advance voting on the third Saturday prior to the election, but were not required to do so unless the second Saturday before the election fell on a holiday, followed a holiday on the prior Thursday or Friday, or preceded a holiday on the subsequent Monday or Tuesday.

results of the general election until Monday, November 21, after the third Saturday before the election has already passed.

The counties' decision to conduct weekend advance voting should be governed by the provisions of Georgia law that apply explicitly to a runoff election. Namely, the county should hold advance voting on "as soon as possible." If it is possible for the Board to hold advance voting on both the second Saturday and Sunday before the election, it should do so. If it is possible for advance voting to begin even earlier – prior to the Thanksgiving holiday – the Board should begin advance voting at that time.

Sincerely,

A handwritten signature in blue ink, appearing to be "Marc E. Elias", written over a light blue horizontal line.

Marc E. Elias  
Jacquelyn K. Lopez  
Elizabeth P. Poston

Counsel to DSCC